

weight is official, board-of-trade, grain-exchange, State, or other supervised weight. This information should be furnished at the time the claim is filed.

(e) A difference in weights at origin and destination, both of which are based on supervised scales, establishes *prima facie* that the loss occurred in transit and that the railroad is liable. When a difference in weights is based in part on an unsupervised weight, which nevertheless, was accepted by the railroad as the basis for assessing freight charges, such unsupervised weight in combination with a supervised weight establishes *prima facie* that the loss occurred in transit and the railroad is liable. When a difference in weights is based in part on an unsupervised weight, with the above exception, a *prima facie* case of railroad liability for loss in transit has *not* been established. Such difference in weights is a factor, however, to be considered in connection with other evidence that a clear-record car arrived at destination with seals intact and unbroken or that the shipper made a written complaint that any car placed for loading was defective, in response to which the railroad filed a written report after investigation of the complaint. See paragraph (c) of § 1037.3.

#### § 1037.2 Cars.

A car is not in suitable condition for the transportation of bulk grain and grain products when it is defective. The rules prescribed in this part 1037 apply on shipments transported solely in railroad-owned and railroad-leased cars.

[57 FR 54334, Nov. 18, 1992]

#### § 1037.3 Claims.

(a) In computing the amount of the loss for which the carrier will pay there will be deducted from the gross amount of the ascertained actual loss one-fourth of 1 percent of the established loading weight to cover invisible loss and waste; provided, however, that where grain and grain products heat in transit and investigation shows that the invisible loss resulting therefrom exceeded one-fourth of 1 percent of such other amount as may hereafter be fixed in the manner above stated, and that the carrier is not otherwise liable

for said loss, then the ascertained actual amount of the invisible loss due to heating of the grain and grain products will be deducted.

(b) Where investigation discloses a defect in equipment, seal or seal record, or a transfer in transit by the carrier of a carload of bulk grain or grain products upon which the unloading weight is less than the loading weight and the shipper furnishes duly attested certificates showing the correctness of the claimed weight, and investigation fails to show that the discrepancy is due to defective scales or other shipper facilities, or to inaccurate weighing or other error at point of origin or destination, or to fraud, then the resulting claim will be adjusted subject to the deductions authorized in the immediately preceding paragraph (a) of this § 1037.3; provided, however, that the clear record of either the carrier's or shippers' facilities shall not be interpreted as affecting or changing the burden of proof now lawfully resting upon either party. Therefore, movement in a clear-record car is not conclusive evidence of the fact that the car is not defective. It must be considered along with other evidence to determine liability. See paragraph (e) of § 1037.1

(c) In case of a disputed claim, the records of both the carrier and the claimant affecting the shipment involved shall be available to both parties. These records shall include a written complaint, if any, filed by the shipper with the railroad at the time the car was placed for loading that the car was defective, and the written report of an investigation of the complaint, filed by the railroad with the shipper, if made.

### PART 1039—EXEMPTIONS

Sec.

1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.

1039.11 Miscellaneous commodities exemptions.

1039.12 Long and short haul transportation exemption.

1039.13 Rail intermodal transportation exemption.

1039.14 Boxcar transportation exemptions and rules.

## § 1039.10

- 1039.16 Exemption of new highway trailers or containers.  
 1039.17 Protective service contracts exemption.  
 1039.20 Storage leases.  
 1039.21 International joint through rates.  
 1039.22 Exemption of certain payments, services, and commitments from the Elkins Act and related provisions.

AUTHORITY: 49 U.S.C. 10502, 13301.

SOURCE: 47 FR 50262, Nov. 5, 1982, unless otherwise noted.

### § 1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.

The rail transportation of the commodities listed below is exempt from the provisions of subtitle IV of title 49, except that carriers must continue to comply with Board accounting and reporting requirements, including a brief statement in their annual reports of operations under this exemption, and must maintain copies of rates, charges, rules or regulations, for traffic moved under this exemption, at their principal office, subject to inspection, and send a letter of notification to the docket [Ex Parte No. 346 (Sub-No. 14)], within 30 days, of the fact that they are using the exemption. All tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply except to the extent adopted by carrier quotations. The categories of commodities which are exempt under this decision, by Standard Transportation Commodity Code (STCC) number are:

01 .....	Farm products, with the exception of grain (STCC No. 0113), soybeans (STCC No. 01144), and sunflower seeds (STCC No. 0114940).
09 .....	Fresh fish and other marine products.
20-11 .....	Fresh meat.
20-15 .....	Fresh dressed poultry.
20-17 .....	Processed poultry.
20-21 .....	Creamery Butter.
20-23 .....	Condensed, Evaporated or Dried Milk.
20-25 .....	Cheese and Special Dairy Products.
20-26 .....	Processed Whole Milk.
20-141 .....	Hides and Skins.
20-144 .....	Animal refuse, tankage, or meat meal.
20-421-27 .....	Citrus pomace.
20-712-12 .....	Shelled walnuts.
20-914-25 .....	Cottonseed hulls.
20-915 .....	Cotton linters.
20-999-29 .....	Butter and honey mixed.
20-999-41 .....	Honey, comb, granulated or strained, or heat treated to retard granulation.
20-999-76 .....	Freeze-dried poultry.
20-999-77 .....	Freeze-dried meat.
20-999-78 .....	Freeze-dried salad ingredients.
20-999-93 .....	Fresh and salted meat and products mixed, not hung.

## 49 CFR Ch. X (10-1-05 Edition)

20-999-94 .....	Fresh and salted meat and products mixed, hung and not hung.
21-4 .....	Stemmed or redried tobacco.
22-811-30 .....	Cotton, carded, dyed or not dyed, but not spun, woven or knitted, but including cotton lap.
22-911-63 .....	Mattress felt, nec, ciors, not finished.
22-911-74 .....	Felts, cotton, nec.
22-971-35 .....	Wool, nec, scoured.
22-995-22 .....	Flax fibre.
22-999-26 .....	Cotton linters, bleached or dyed.
28-423-37 .....	Beeswax.

and shall embrace all articles assigned additional digits. The STCC shall be those code numbers in effect as of January 1, 1979, as shown in Standard Transportation Commodity Code Tariff 1-G, STB STCC 6001-C. Nothing in this exemption shall be construed to affect our jurisdiction under section 10502 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 9277, Mar. 4, 1983; 49 FR 22095, May 25, 1984, as amended at 49 FR 26745, June 29, 1984; 49 FR 27321, July 3, 1984; 64 FR 53267, Oct. 1, 1999; 69 FR 58365, Sept. 30, 2004]

### § 1039.11 Miscellaneous commodities exemptions.

(a) *Commodities exempted.* Except as indicated in paragraph (b) of this section, the rail transportation of the commodities listed below is exempt from the provisions of 49 U.S.C. subtitle IV. The Standard Transportation Commodity Code (STCC) numbers that identify the exempted commodities are those in effect on the effective date of the tariff cited, and shall embrace all commodities assigned additional digits.

STCC No.	STCC tariff	Commodity
14 1 .....	6001-T, eff. 1-1-92.	Dimension stone, quarry.
14 2 .....	.....do .....	Crushed or broken stone or riprap.
14 411 ...	.....do .....	Sand (aggregate or ballast).
14 412 ...	.....do .....	Gravel (aggregate or ballast).
20 .....	.....do .....	Food or kindred products except 20 143 Grease or inedible tallow. 20 32 Canned specialties. 20 33 Canned fruits, jams, jellies, preserves or vegetables. 20 4 Grain mill products. 20 6 Sugar, beet or cane. 20 8 Beverages or flavoring extracts. 20 911 Cottonseed oil, crude or refined.

# Surface Transportation Board, DOT

§ 1039.11

STCC No.	STCC tariff	Commodity	STCC No.	STCC tariff	Commodity
		20 914 Cottonseed cake or meal or by-products.	38 .....	.....do .....	Instruments, photographic goods, optical goods, watches or clocks.
		20 92 Soybean oil or by-products.	39 .....	.....do .....	Miscellaneous products of manufacturing.
		20 93 Nut or vegetable oils or by-products.			Used vehicles.
22 .....	.....do .....	Textile mill products.	41 118 ...	6001-U, eff. 1-1-93.	
23 .....	.....do .....	Apparel or other finished textile products or knit apparel.	14 715 ...	6001-V, eff. 1-1-94.	Rock salt.
24 .....	.....do .....	Lumber or wood products.	20 143 ...	.....do .....	Grease or inedible tallow.
25 .....	.....do .....	Furniture or fixtures.	28 133 ...	.....do .....	Carbon dioxide.
26 .....	.....do .....	Pulp, paper or allied products except	28 991 ...	.....do .....	Salt.
		26 1 Pulp or pulp mill products.	32-4 .....	.....do .....	Hydraulic cement.
		26 211 Newsprint.	34 912 ...	6001-W, eff. 1-1-95..	Steel shipping containers.
		26 212 Ground wood paper, uncoated.	40 211 ...	.....do .....	Iron and steel scrap.
		26 213 Printing paper, coated or uncoated, etc.	33 119 ...	6001-X, eff. 1-11-96.	Blast furnace, open hearth, rolling mill or coke oven products, NEC.
		26 214 Wrapping paper, wrappers or coarse paper.	20511 ...	6001-X, eff., 1-1-96.	Bread or other bakery products exc. biscuits, crackers, pretzels or other dry bakery products. See 20521-20529.
		26 218 Sanitary tissue stock.			
		26 471 Sanitary tissues or health products.	22941 ...	.....do .....	Textile waste, garnetted, processed, or recovered or recovered fibres or flock exc. packing or wiping cloths or rags. See 22994.
		26 6 Building paper or building board except			
		26 613 Wallboard.	22973 ...	.....do .....	Textile fibres, laps, noils, nubs, roving, sliver or slubs, prepared for spinning, combed or converted.
27 .....	.....do .....	Printed matter.			
28 195 .....	.....do .....	Iron chloride, liquid.	22994 ...	.....do .....	Packing or wiping cloths or rags (processed textile wastes).
22-23. ....	.....do .....		24293 ...	.....do .....	Shavings or sawdust.
28 195 .....	.....do .....	Iron sulphate.	30311 ...	.....do .....	Reclaimed rubber.
27-30. ....	.....do .....		3229924 .....	.....do .....	Cullet (broken glass).
28 195 .....	.....do .....	Ferrous sulphate.	33312 ...	.....do .....	Copper matte, speiss, flue dust, or residues, etc.
68-69. ....	.....do .....		33322 ...	.....do .....	Lead matte, speiss, flue dust, dross, slag, skimmings, etc.
29 914 ...	.....do .....	Coke produced from coal.	33332 ...	.....do .....	Zinc dross, residues, ashes, etc.
29 915 ...	.....do .....	Distillate or residual fuel oil from coal refining.	33342 ...	.....do .....	Aluminum residues, etc.
			33398 ...	.....do .....	Misc. nonferrous metal residues, including solder babbitt or type metal residues.
30 .....	.....do .....	Rubber or miscellaneous plastics products except	40112 ...	.....do .....	Ashes.
		30 111 Rubber pneumatic tires or parts.	40212 ...	.....do .....	Brass, bronze, copper or alloy scrap, tailings, or wastes.
31 .....	.....do .....	Leather or leather products.	40213 ...	.....do .....	Lead, zinc, or alloy scrap, tailings or wastes.
32 .....	.....do .....	Clay, concrete, glass or stone products except	40214 ...	.....do .....	Aluminum or alloy scrap, tailings or wastes.
		32 411 Hydraulic cement, natural, portland or masonry.	4021960 .....	.....do .....	Tin scrap, consisting of scraps or pieces of metallic tin, clippings, drippings, shavings, turnings, or old worn-out block tin pipe having value for remelting purposes only.
		32 741 Lime or lime plaster.			
		32 95 Nonmetallic earths or minerals, ground or treated in any other manner except	40221 ...	.....do .....	Textile waste, scrap or sweepings.
		32 952 15 Cinders, clay, shale expanded shale), slate or volcanic (not pumice stone), or haydrite.	40231 ...	.....do .....	Wood scrap or waste.
			40241 ...	.....do .....	Paper waste or scrap.
33 .....	.....do .....	Primary metal products, including galvanized.	40251 ...	.....do .....	Chemical or petroleum waste, including spent.
34 .....	.....do .....	Fabricated metal products except	40261 ...	.....do .....	Rubber or plastic scrap or waste.
		34 6 Metal stampings.	4029114 .....	.....do .....	Municipal garbage waste, solid, digested and ground, other than sewage waste or fertilizer.
		34 919 40 Radioactive material shipping containers, etc.			
35 .....	.....do .....	Machinery except	4029176 .....	.....do .....	Automobile shredder residue.
		35 11 Steam engines, turbines, turbine generator sets, or parts.	4111434 .....	.....do .....	Bags, old, burlap, gunny, istle (ixtle), jute, or sisal, NEC.
		35 85 Refrigerators or refrigeration machinery or complete air-conditioning units.			
36 .....	.....do .....	Electrical machinery, equipment or supplies except			
		36 12 Power, distribution or specialty transformers.			
		36 21 Motors or generators.			
37 11 ....	.....do .....	Motor vehicles.			
37 14 ....	.....do .....	Motor vehicle parts or accessories.			

## § 1039.12

STCC No.	STCC tariff	Commodity
41115 ....	.....do. ....	Articles, used, returned for repair or reconditioning.
42111 ....	.....do. ....	Nonrevenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC, empty, returning in reverse of route used in loaded movement, and so certified.
42112 ....	.....do. ....	Nonrevenue movement of shipping devices, consisting of blocking, bolsters, cradles, pallets, racks, skids, etc., empty, returning in reverse of route used in loaded movement, and so certified.
42311 ....	.....do. ....	Revenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC., empty, returning in reverse of route used in loaded movement and so certified.

Excluded from this exemption are any movements for which a finding of market dominance has been made. However, this exemption shall not be construed as affecting in any way the existing regulations, agreements, prescriptions, conditions, allowances or levels of compensation regarding the use of equipment, whether shipper or railroad owned or leased, including car hire, per diem and mileage allowances, and also including exemption from the anti-trust laws necessary to negotiate car service regulations or mandatory interchange of equipment or to maintain and execute such agreements. Nor shall this exemption be construed to affect existing Class III railroad "protections" in the case of boxcars.

(b) *Conditions.* Carriers must continue to comply with Board accounting and reporting requirements. All railroad tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply. This exemption shall remain in effect, unless modified

## 49 CFR Ch. X (10–1–05 Edition)

or revoked by a subsequent order of this Board.

[48 FR 24901, June 3, 1983, as amended at 48 FR 33306, July 21, 1983; 48 FR 55744, Dec. 15, 1983; 54 FR 51402, Dec. 15, 1989; 56 FR 31547, July 11, 1991; 58 FR 4356, Jan. 14, 1993; 58 FR 27951, May 12, 1993; 58 FR 43818, Aug. 18, 1993; 58 FR 53434, Oct. 15, 1993; 59 FR 51134, Oct. 7, 1994; 59 FR 59663, Nov. 18, 1994; 59 FR 63926, Dec. 12, 1994; 60 FR 26840, May 19, 1995; 60 FR 38281, July 26, 1995; 61 FR 7426, Feb. 28, 1996; 61 FR 47446, Sept. 9, 1996; 61 FR 66231, Dec. 17, 1996; 63 FR 19665, Apr. 21, 1998]

### § 1039.12 Long and short haul transportation exemption.

(a) All rates and charges for rail transportation are exempt from the provisions of 49 U.S.C. 10726 to the extent that:

(1) Board approval or consideration before the effective date of these rates and charges is not required; and

(2) Section 10707 will not apply to rates to the extent that they are challenged on the basis of alleged violations of section 10726.

(b) This exemption does not extend to review by the Board upon the filing of a formal complaint alleging a violation of section 10726. Board review will, however, be subject to the following conditions:

(1) A showing that a rate violates section 10726 will not create a presumption that the higher rate is unreasonably high, and

(2) A finding by the Board that a rate or charge violates the provisions of section 10726 will not, absent a specific showing of damages, afford a basis for an award of reparations.

[48 FR 9649, Mar. 8, 1983]

### § 1039.13 Rail intermodal transportation exemption.

See Part 1090.

[52 FR 23660, June 24, 1987]

### § 1039.14 Boxcar transportation exemptions and rules.

(a) The Rail transportation of all commodities in boxcars is exempt from the provisions of 49 U.S.C. subtitle IV except as otherwise provided in this section.

(b) The Board retains jurisdiction in the following areas:

(1) Car hire and car service.

(2) Mandatory interchange of equipment.

(3) Reciprocal switching or joint use of terminal facilities.

(4) Car supply.

(5) Freight car pooling agreements.

(6) Freight rates applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier, to the extent provided in paragraphs (c)(4) and (c)(5) of this section.

(c)(1) Except as provided in paragraph (c)(2) of this section, carriers are authorized to take the following actions with respect to boxcar equipment use:

(i) Assess charges for empty movement of cars where movements are made at the request of the car owner, the Association of American Railroads, or the Board. The empty mileage charge is subject to a maximum of 35 cents per mile, as adjusted for inflation or deflation using the rail cost adjustment factors published periodically by the Board in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. In applying those factors, the figure of 35 cents will be treated as having been in effect on October 1, 1982.

(ii) Store empty cars and reclaim car hire payments beginning at the expiration of a 72-hour grace period after the car is made empty.

(iii) Negotiate bilateral agreements governing car hire rates, empty movements, and storage.

(2) The authorization in paragraphs (c)(1) (i) and (ii) of this section will not apply to excluded carriers, as defined in paragraph (c)(2)(i) of this section, nor will it apply to any boxcar which, on December 30, 1983, was owned or leased by a carrier which then would have qualified as an excluded carrier and which bears the reporting marks of an excluded carrier.

(i) An "excluded carrier" is a Class III carrier or a Class II carrier not affiliated with one or more Class I carriers. To be affiliated, the Class II carrier must be more than 50 percent owned by one or more Class I carriers.

(ii) The boxcar exclusion of paragraph (c)(2) of this section will apply:

(A) To an excluded boxcar whenever it is owned or leased by any Class III carrier and bears a Class III carrier's reporting marks; and

(B) To an excluded boxcar owned or leased by an excluded Class II carrier beginning on October 16, 1986, and ending on October 31, 1990, so long as such boxcar has not been otherwise owned or leased by another carrier during this period.

(iii) The exclusion will not apply during any period in which an excluded boxcar is leased or assigned to a Class I or affiliated Class II carrier. If an excluded Class II carrier becomes a Class III carrier within the period under § 1039.14(c)(2)(ii)(B), that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class III carrier on December 10, 1983.

(iv) Nothing in paragraph (c)(2) of this section will affect the right of any carrier to negotiate bilateral agreements governing car hire rates and rules.

(3) The hourly and mileage car hire rates in effect on January 1, 1985, as published in AAR Traffic Circular No. OT-10, for any boxcar excluded under paragraph (c)(2) of this section, will remain in effect without regard to the aging of such car subsequent to January 1, 1986, and any modification to the existing car hire formula will not apply to such cars. With respect to an excluded boxcar owned or leased by an excluded Class II carrier, those car hire rates shall remain in effect through October 31, 1990. Any improvements subsequent to January 1, 1985, to the excluded boxcars capitalized under OT-37 criteria or under rebuilt criteria will be subject to the same formula applicable to OT-37 or rebuilt cars under Ex Parte No. 334 or any other railroad car hire proceeding, including any efficiency ratio, if adopted. Any improvements or repairs subsequent to December 31, 1990, to the excluded boxcars performed under OT-37 criteria or under rebuilt criteria or any other criteria shall not result in any increases, additions, or surcharges in the car hire rates for such cars.

(4) No freight rate made effective after April 1, 1985, that applies to traffic moving by boxcar and originating or terminating at an industry facility served physically by a Class III rail carrier may discriminate while these rules are in effect on the basis of:

## § 1039.16

(i) The ownership of the boxcar used or the reporting marks any such boxcar bears;

(ii) The car hire rate applicable to the boxcar used; or

(iii) Any car hire discounts, in the form of reclaims or otherwise, available to any carriers with respect to the boxcar used.

Except as prohibited above, carriers may use car ownership or car marks for identification purposes when establishing rates.

(5) The provisions of 49 U.S.C. 10705 and 10705a applicable to joint rates and through routes will be effective as to rates and routes applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier.

(6) The following carriers are not regarded as Class III or unaffiliated Class II carriers for the purpose of this section:

Central New York Railroad Corporation  
Cooperstown and Charlotte Valley Railway Corporation  
Fonda, Johnstown & Gloversville Railroad Corporation  
Lackawaxen and Stourbridge Railroad Corporation  
New York, Susquehanna & Western Railway Corporation  
Rahway Valley Railroad Company  
Staten Island Railway Corporation.

(d) Carriers must continue to comply with Board accounting and reporting requirements. Railroad tariffs pertaining to the exempted transportation of commodities in boxcars will no longer apply. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 20415, May 6, 1983, as amended at 50 FR 20419, May 16, 1985; 51 FR 32656, Sept. 15, 1986; 51 FR 32922, Sept. 17, 1986; 52 FR 37971, Oct. 13, 1987; 55 FR 41339, Oct. 11, 1990; 57 FR 53451, Nov. 10, 1992; 57 FR 56641, Nov. 30, 1992; 61 FR 26847, May 29, 1996]

## § 1039.16 Exemption of new highway trailers or containers.

The rail transportation of new highway trailers or containers (which is not otherwise exempt) is exempt from the provisions of 49 U.S.C. Subtitle IV, except that carriers must continue to comply with the Board's accounting

## 49 CFR Ch. X (10–1–05 Edition)

and reporting requirements. This exemption will remain in effect unless modified or revoked by subsequent order of this Board.

[52 FR 17404, May 8, 1987]

## § 1039.17 Protective service contracts exemption.

Contracts for protective services against heat or cold, provided to or on behalf of rail carriers and express companies, are exempt from the requirements of 49 U.S.C. 11105. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[49 FR 19025, May 4, 1984]

## § 1039.20 Storage leases.

Storage leases for all equipment for all carriers are exempt from the provisions of 49 U.S.C. subtitle IV except for 49 U.S.C. 11123. Nothing in this exemption should be construed to affect our jurisdiction under section 10502 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent decision of this Board.

[51 FR 46675, Dec. 24, 1986, as amended at 69 FR 58365, Sept. 30, 2004]

## § 1039.21 International joint through rates.

Rail carriers are exempt from the provisions of § 1312.37 that require the filing of tariffs containing international joint through rates. Rail carriers must continue to comply with Board accounting and reporting requirements. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[51 FR 27046, July 29, 1986]

## § 1039.22 Exemption of certain payments, services, and commitments from the Elkins Act and related provisions.

(a) Whenever a rail carrier:

## Surface Transportation Board, DOT

## § 1090.1

(1) Provides payments or services for industrial development activities; or,

(2) Makes commitments regarding future transportation;

and reasonably determines that such payments, services or commitments would not be eligible for inclusion in rail contracts under 49 U.S.C. 10713, such transaction(s) shall be exempt from 49 U.S.C. 10761(a), 10762(a)(1), 11902, 11903, and 11904(a), subject to the conditions set forth in paragraphs (b) through (e) of this section.

(b) If any interested person(s) believes a transaction is eligible for inclusion in one or more contracts under 49 U.S.C. 10713, that person's exclusive remedy shall be to request the Board to so determine, and if the Board does so, the transaction shall no longer be exempted by this section commencing 60 days after the date of the Board's determination.

(c) Transactions that are exempt under paragraph (a) of this section shall be subject to all other applicable provisions of Title 49 U.S.C. Subtitle IV and to the antitrust laws to the extent that the activity does not fall within the Board's exclusive jurisdiction.

(d) For any actual movement of traffic, a carrier must file any required tariff or section 10713 contract, and conform to all other applicable provisions of the Interstate Commerce Act, but this paragraph shall not be interpreted to limit, revoke, or remove the effect of the exemption granted under paragraph (a) of this section with respect to any payments, services, or commitments made prior to the filing of the rate or contract.

(e) When any person files with the Board a petition to revoke the exemption granted by this section as to any specific transaction, the rail carrier shall have the burden of showing that, with respect to such transaction, all requirements of paragraph (a) of this section were met, and the carrier reasonably expected, before undertaking such payments, services or commitments, that such payments, services or commitments would result, within a reasonable time, in a contribution to the carrier's going concern value.

(f) This exemption shall remain in effect unless modified or revoked by a subsequent order of this Board.

[57 FR 11913, Apr. 8, 1992]

### PARTS 1070-1079 [RESERVED]

### Parts 1090-1099—Intermodal Transportation

## PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

Sec.

1090.1 Definition of TOFC/COFC service.

1090.2 Exemption of rail and highway TOFC/COFC service.

1090.3 Use of TOFC/COFC service by motor and water carriers.

AUTHORITY: 49 U.S.C. 721.

### § 1090.1 Definition of TOFC/COFC service.

(a) Rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service means the transportation by rail, in interstate or foreign commerce, of—

(1) Any freight-laden highway truck, trailer, or semitrailer,

(2) The freight-laden container portion of any highway truck, trailer, or semitrailer having a demountable chassis,

(3) Any freight-laden multimodal vehicle designed to operate both as a highway truck, trailer, or semitrailer and as a rail car,

(4) Any freight-laden intermodal container comparable in dimensions to a highway truck, trailer, or semitrailer and designed to be transported by more than one mode of transportation, or

(5) Any of the foregoing types of equipment when empty and being transported incidental to its previous or subsequent use in TOFC/COFC service.

(b) Highway TOFC/COFC service means the highway transportation, in interstate or foreign commerce, of any of the types of equipment listed in paragraph (a) of this section as part of a continuous intermodal movement that includes rail TOFC/COFC service,